

SENATE BILL 3033

By Faulk

AN ACT to amend Tennessee Code Annotated, Title 4,
relative to recognition of Native American Indian
Tribes, Bands, Groups and Associations.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 4, is amended by adding the following language as a new chapter 54.

§ 4-54-101.

As used in this chapter:

(1) "Autonomous" means the exercise of political influence or authority independent of the control of any other Indian governing entity. Autonomous must be understood in the context of the history, geography, culture and social organization of the petitioning group;

(2) "Community" means any group of people which can demonstrate that consistent interactions and significant social relationships exist within its membership and that its members are differentiated from and identified as distinct from nonmembers. Community must be understood in the context of the history, geography, culture and social organization of the group;

(3) "Continuous" or "continuous" means extending from first sustained contact with non-Indians throughout the group's history to the present substantially without interruption;

(4) "Department" means the department of state;

(5) "Documented petition" means the detailed arguments made by a petitioner to substantiate its claim to continuous existence as an Indian tribe,

together with the factual exposition and all documentary evidence necessary to demonstrate that these arguments address the mandatory criteria in § 4-54-104

(a) (1) — (7);

(6) “Historically,” “historical” or “history” means dating from first sustained contact with non-Indians;

(7) “Indian group” or “group” means any Native American Indian aggregation within the continental United States that the Secretary of the Interior does not acknowledge to be an Indian tribe;

(8) “Indian tribe”, also referred to in this chapter as “tribe”, means any Native American Indian tribe, band, village, or community seeking state recognition;

(9) “Letter of intent” means an undocumented letter or resolution by which an Indian group requests state acknowledgment as an Indian tribe and expresses its intent to submit a documented petition;

(10) “Member of an Indian group” means an individual who is recognized by an Indian group as meeting its membership criteria and who consents to being listed as a member of that group;

(11) “Member of an Indian tribe” means an individual who meets the membership requirements of the tribe as set forth in its governing document or, absent such a document, has been recognized as a member collectively by those persons comprising the tribal governing body, and has consistently maintained tribal relations with the tribe or is listed on the tribal rolls of that tribe as a member, if such rolls are kept;

(12) “Petitioner” means any entity that has submitted a letter of intent to the secretary of state requesting acknowledgment that it is an Indian tribe.

(13) "Political influence" or "authority" means a tribal council, leadership, internal process or other mechanism which the tribe or group has used as a means of influencing or controlling the behavior of its members in significant respects, and/or making decisions for the tribe or group which substantially affect its members, and/or representing the tribe or group in dealing with outsiders in matters of consequence. This process is to be understood in the context of the history, culture and social organization of the tribe or group;

(14) "Previous federal acknowledgment" means action by the federal government clearly premised on identification of a tribal political entity and indicating clearly the recognition of a relationship between that entity and the United States;

(15) "Secretary" means the Tennessee secretary of state or that officer's authorized representative;

(16) "Sustained contact" means the period of earliest sustained non-Indian settlement and/or governmental presence in the local area in which the historical tribe or tribes from which the petitioner descends was located historically;

(17) "Tribal relations" means participation by an individual in a political and social relationship with an Indian tribe; and

(18) "Tribal roll", means a list exclusively of those individuals who have been determined by the tribe to meet the tribe's membership requirements as set forth in its governing document. In the absence of such a document, a tribal roll means a list of those recognized as members by the tribe's governing body. In either case, those individuals on a tribal roll must have affirmatively demonstrated consent to being listed as members.

§ 4-54-102.

(a)

(1) Any Indian group in the state of Tennessee that believes it should be receive official recognition by the state to be tribe of Native American Indian people and that can satisfy the criteria in § 4-54-104(a)(1) — (7) may submit a letter of intent to the secretary of state.

(2) The letter of intent must be produced, dated and signed by the governing body of an Indian group and submitted to the secretary.

(b) Letters of intent requesting official recognition by the state of Tennessee that an Indian group exists as an Indian tribe shall be filed with the secretary in accordance with § 4-54-103. A letter of intent may be filed in advance of, or at the same time as, a group's documented petition.

§ 4-54-103.

(a) After an Indian group has filed a letter of intent requesting official recognition by the state as a tribe of Native American Indian people and until that group has actually submitted a documented petition, the secretary may contact the group periodically and request clarification, in writing, of its intent to continue with the petitioning process.

(b) Any petition to the state of Tennessee seeking official recognition as a tribe of Native American Indian people shall be submitted to the department of state and shall conform with application policies and procedures established by the department. Such policies and procedures shall include, but shall not be limited to, payment of reasonable application fees.

(c) In accordance with the requirements of title 8, chapter 44, the department shall conduct at least one (1) public hearing for the sole purpose of

receiving documentary evidence and oral testimony in support of, or in opposition to, each such petition.

(d) Evaluation of petitions shall take into account historical situations and time periods for which evidence is demonstrably limited or not available. The limitations inherent in demonstrating the historical existence of community and political influence or authority shall also be taken into account. Existence of community and political influence or authority shall be demonstrated on a substantially continuous basis, but this demonstration does not require meeting these criteria at every point in time. Fluctuations in tribal activity during various years shall not in themselves be a cause for denial of official recognition by the state under the criteria required to be met pursuant to § 4-54-104(a)(1) — (7).

(e) The criteria required to be met pursuant to § 4-54-104(a)(1) — (7) shall be interpreted as applying to tribes or groups that have historically combined and functioned as a single autonomous political entity.

(f) Splinter groups, political factions, communities or groups of any character that separate from the main body of a currently federally acknowledged tribe that can establish clearly that they have functioned throughout history until the present as an autonomous tribal entity may be granted official recognition under this chapter, even though they have been regarded by some as part of or have been associated in some manner with federally acknowledged North American Indian tribe.

(g)

(1) Upon receiving and evaluating all application materials, documentary evidence, and oral testimony as well as any other relevant information generated through departmental research or inquiry, the

secretary of state is authorized to issue a Tennessee certificate of official recognition to the group as a state recognized tribe of Native American Indian people; provided, however, no such certificate shall be issued unless and until the department publishes written findings that the petitioning group has clearly demonstrated that it satisfies all of the criteria in § 4-54-104(a)(1) — (7).

(2) The documented petition must include thorough explanations and supporting documentation in response to all of the criteria. The definitions in § 4-54-101 are an integral part of meeting the requirements, and the criteria should be read carefully together with these definitions.

§ 4-54-104.

(a) The criteria in subdivisions (1)(1) — (7) of this subsection are mandatory; provided, that the specific forms of evidence listed in subdivisions (a)(1) — (3) and (a)(5), may be met alternatively by any suitable evidence that demonstrates that the petitioner meets the requirements of the criterion statement and related definitions. The criteria are:

(1) The petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900. Evidence that the group's character as an Indian entity has from time to time been denied shall not be considered to be conclusive evidence that this criterion has not been met. Evidence to be relied upon in determining a group's Indian identity may include one (1) or a combination of the following, as well as other evidence of identification by other than the petitioner itself or its members:

(A) Identification as an Indian entity by federal authorities;

(B) Relationships with state governments based on identification of the group as Indian;

(C) Dealings with a county, municipality, or other local government entity in a relationship based on the group's Indian identity;

(D) Identification as an Indian entity by anthropologists, historians, and/or other scholars;

(E) Identification as an Indian entity in newspapers and books; or

(F) Identification as an Indian entity in relationships with Indian tribes or with national, regional, or state Indian organizations.

(2) A predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present.

(A) This criterion may be demonstrated by some combination of the following evidence and/or other evidence that the petitioner meets the definition of community:

(i) Significant rates of marriage within the group, and/or, as may be culturally required, patterned out-marriages with other Indian populations;

(ii) Significant social relationships connecting individual members;

(iii) Significant rates of informal social interaction which exist broadly among the members of a group;

(iv) A significant degree of shared or cooperative labor or other economic activity among the membership;

(v) Evidence of strong patterns of discrimination or other social distinctions by non-members;

(vi) Shared sacred or secular ritual activity encompassing most of the group;

(vii) Cultural patterns shared among a significant portion of the group that are different from those of the non-Indian populations with whom it interacts. These patterns must function as more than a symbolic identification of the group as Indian. They may include, but are not limited to, language, kinship organization, or religious beliefs and practices;

(viii) The persistence of a named, collective Indian identity continuously over a period of more than fifty (50) years, notwithstanding changes in name; or

(ix) A demonstration of historical political influence under the criterion in subdivision (a)(3) shall be evidence for demonstrating historical community.

(B) A petitioner shall be considered to have provided sufficient evidence of community at a given point in time if evidence is provided to demonstrate any one of the following:

(i) More than fifty percent (50%) of the members reside in a geographical area exclusively or almost exclusively composed of members of the group, and the

balance of the group maintains consistent interaction with some members of the community;

(ii) At least fifty percent (50%) of the marriages in the group are between members of the group;

(iii) At least fifty percent (50%) of the group members maintain distinct cultural patterns such as, but not limited to, language, kinship organization, or religious beliefs and practices;

(iv) There are distinct community social institutions encompassing most of the members, such as kinship organizations, formal or informal economic cooperation, or religious organizations; or

(v) The group has met the criterion in subdivision

(a)(3) using evidence described in subdivision (a)(3)(B);

(3) The petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present.

(A) This criterion may be demonstrated by some combination of the evidence listed below and/or by other evidence that the petitioner meets the definition of political influence or authority:

(i) The group is able to mobilize significant numbers of members and significant resources from its members for group purposes;

(ii) Most of the membership considers issues acted upon or actions taken by group leaders or governing bodies to be of importance;

(iii) There is widespread knowledge, communication and involvement in political processes by most of the group's members;

(iv) The group meets the criterion in subdivision (a)(2) at more than a minimal level; or

(v) There are internal conflicts which show controversy over valued group goals, properties, policies, processes and/or decisions.

(B) A petitioning group shall be considered to have provided sufficient evidence to demonstrate the exercise of political influence or authority at a given point in time by demonstrating that group leaders and/or other mechanisms exist or existed that:

(i) Allocate group resources such as land, residence rights and the like on a consistent basis;

(ii) Settle disputes between members or subgroups by mediation or other means on a regular basis;

(iii) Exert strong influence on the behavior of individual members, such as the establishment or maintenance of norms and the enforcement of sanctions to direct or control behavior; and

(iv) Organize or influence economic subsistence activities among the members, including shared or cooperative labor.

(C) A group that has met the requirements in subdivision (a)(2)(B) at a given point in time shall be considered to have provided sufficient evidence to meet this criterion at that point in time;

(4) A copy of the group's present governing document including its membership criteria. In the absence of a written document, the petitioner must provide a statement describing in full its membership criteria and current governing procedures;

(5) The petitioner's membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity;

(A) Evidence acceptable to the secretary which can be used for this purpose includes but is not limited to:

(i) Rolls prepared by the federal Secretary of the Interior on a descendency basis for purposes of distributing claims money, providing allotments, or other purposes;

(ii) State, federal, or other official records or evidence identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity;

(iii) Church, school, and other similar enrollment records identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity;

(iv) Affidavits of recognition by tribal elders, leaders, or the tribal governing body identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity; and

(v) Other records or evidence identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(B) The petitioner must provide an official membership list, separately certified by the group's governing body, of all known current members of the group. This list must include each member's full name (including maiden name), date of birth, and current residential address. The petitioner must also provide a copy of each available former list of members based on the group's own defined criteria, as well as a statement describing the circumstances surrounding the preparation of the current list and, insofar as possible, the circumstances surrounding the preparation of former lists;

(6) The membership of the petitioning group is composed principally of persons who are not members of any federally acknowledged North American Indian tribe. However, under certain conditions a petitioning group may be granted official state recognition as a Native American Indian tribe even if its membership is composed principally of persons whose names have appeared on rolls of, or who have been otherwise associated with, a federally acknowledged Indian tribe. The conditions are that the group must establish that it has functioned throughout history until the present as a separate and autonomous Indian tribal entity, that its members do not maintain a bilateral political relationship with the federally acknowledged Indian tribe, and that its members have provided written confirmation of their membership in the petitioning group; and

(7) Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the state relationship.

(b) A petitioner may be denied official recognition by the state if the evidence available demonstrates that it does not meet one (1) or more of the criteria required to be met pursuant to subsection (a). A petitioner may also be denied if there is insufficient evidence that it meets one (1) or more of the criteria required to be met pursuant to subsection (a). A criterion shall be considered met if the available evidence establishes a reasonable likelihood of the validity of the facts relating to that criterion. Conclusive proof of the facts relating to a criterion shall not be required in order for the criterion to be considered met.

4-54-105.

(a) Upon a finding that a state certificate of official recognition of a group as a tribe of Native American Indian people was issued based upon fraudulent evidence or testimony or upon a finding that a previously recognized tribe no longer meets one (1) or more of the criteria enumerated in § 4-54-104(a)(1) — (7), the department shall revoke the tribe's certificate of official recognition.

(b) A petitioner, who is aggrieved by departmental action taken pursuant to this act, may seek redress through the procedures set forth in title 4, chapter 5, part 3.

(c) Possession of a Tennessee certificate of official recognition as a tribe of Native American Indian people does not in any way absolve or exempt the tribe or any of its individual members from compliance with the provisions of Tennessee's constitution, statutes, rules or regulations or the provisions of locally promulgated ordinances, resolutions, rules or regulations.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.